McBRIDE Spectrum Partners, LLC

November 02, 2011

VIA ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary Federal Communications Commission 445 12th Street, SW Room TWA325 Washington, DC 20554

Re: Letter, WT Docket No. 11-18; RM-11592

Dear Ms. Dortch:

The Commission must take action to resolve the problem of interoperability in the 700MHz. spectrum band and to immediately freeze the equipment authorization on equipment that can not operate on all of the spectrum frequencies in the 700 MHz band. The build-out deadlines for the lower 700MHz. A block band licenses is just around the corner and it is important that the Commission act swiftly to implement interoperability within the 700 MHz band. The argument that it would cost to much and that the complexity of interoperability is beyond the ability of the chip manufactures is far from the truth. The mobile telecommunications industry is divided among a two big companies who have a combined market capitulation of over \$275 billion and hold a wide and substantial edge on its smaller competitors. Controling 85 % of the mobile market among two big companies who exercise their power and influence over the mobile device manufactures and demand that devices be made that only operate on the

<sup>1</sup> In the Matter of Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks r700 MHz Block A Good Faith Purchasers Allianc

frequency bands owned by them. A business practice of using their dominance in the market to control the development and production of mobile devices that will only work in the 700MHz, spectrum band they hold. Anti-competitive behavior in a attempt to suppress the competition by using its influence and power to manipulate the access and availability of mobile devices. One must question this premeditated objective to slow the competition down with incompatible 700 MHz. bands. Behavior that reaches the outer boundaries of responsible business ethics. The Commission has an obligation as regulators of the industry to enforce policies that protect small business from the harmful side effects of such unfairness which undermines the very principals and objectives of the Commission to promote competitiveness in the mobile industry. <sup>2</sup>The Commission has available before it an avalanche of data and reports that supports mandatory interoperability in the 700MHz. band and has no reasons to delay a decision on this matter. The Commission has the authority to make interoperability in the 700 MHz band a reality. The unnecessary foot-dragging is preventing the build-out of mobile broadband networks in many rural areas. The facts are crystal clear that ensuring compatibility throughout the 700MHz band has substantial consumer benefits that will ensure rural carriers don't get left behind. Non decision-making has hampered the ability of small carriers to meet its geographic performance requirements. Small

<sup>&</sup>lt;sup>2</sup>The NRIC VII was composed of approximately 40 senior telecommunications industry representatives who spent numerous hours and and significant expenses and extensive effort working on these issues over a period of 2 years on this report. A primary motivator behind the charter for NRIC was the FCC's conclusion that it is compelled to play a role in fostering timely, fair, and open development of standards for current and future technologies. The FCC concluded that a Federal Advisory Committee (FAC) was the appropriate forum to advise it on spectrum compatibility standards and spectrum management practices to ensure the competitive deployment of advanced services and technologies to their customers.

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business must be able to compete in the mobile broadband business on a level playing field. The ball is now in the Commission's court and the game is now running into overtime. The wireless industry is overwhelmingly concentrated and dominated by just a few nationwide behemoths and any additional delays on interoperability is unnecessary and will have severe consequences for the smaller carriers and consumers alike. I urged the Commission to address these challenges expeditiously given the long time needed to construct a greenfield mobile broadband network. For the benefit of consumers the Commission should take steps to ensure that smaller players have the ability to compete by adopting interoperability in the 700MHz. band. There are significant constraints on the ability of smaller carriers to compete and with out adopting interoperability in the 700MHz. band smaller carriers survival is being threatened. Consumers demand access to the latest and most advanced handsets and without interoperability in the 700MHz. band smaller carriers are at a big disadvantage. This is a opportunity to address the underlying competitive issues in wireless markets and to make sure that interoperability in the 700MHz. band becomes a reality. Interoperability is clearly in the public interest and is a prerequisite to true competition. The Commission can, and should take action immediately to solve these problems. The FCC broadband plan makes clear that the 700 MHz band will play a key role in the mobile communication needs of everyone no matter where someone lives. The 700MHz, band must not be handicapped at the outset by limiting access to only a handful of companies who dominate the industry. If competition and diversity are to thrive the whole 700 MHz. band must be made accessible to everyone and prohibit

restrictive arrangements that are not in the public interest. <sup>3</sup>The FCC own recent estimates indicate that the nation is running out of spectrum and will experience a spectrum deficit starting in 2013. Increasing the amount of radio spectrum is important in order to meet public demand. Interoperability in the 700MHz, band is necessary in order to optimize the spectrum that has already been granted. Instead we have been wasting very valuable spectrum by not having interoperability in the 700MHz. band waiting for the relief sought by the alliance. The Commission has a long track record of prohibiting other restrictive arrangements that become obstacles to competitive access in the telecommunications market. The Commission has the authority to address discriminatory and anti-competitive practices under the Communications Act, and it should do so as soon as possible. Exclusivity arrangements, which prevent small wireless carriers from being able to obtain many wireless devices, restrictive banding arrangements and procurement practices promise to widen the competitive disparity that exists between small carriers and the big two. I agree with the 700 MHz alliance that the Commission should initiate a rule-making to investigate these practices, and the extent to which they will harm the competition. The Commission should not hesitate to exercise its authority to prohibit these arrangements when they are found to be contrary to the public interest. Further the Commission should stay all construction requirements for block A licensees until the Commission resolves the important issues raised by the petition. The FCC has long recognized the benefits of having robust competition in the

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<sup>&</sup>lt;sup>3</sup> Point of View: Wireless Point of Disconnect by Michael Kleeman October 2011GIIC Global Information Industry Center School of International Relations & Pacific Studies University of California San Diego

<sup>&</sup>lt;sup>4</sup> Auction of 700 MHz Band Licenses Closes Public Notice, DA 08-595, released March 20, 2008.

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wireless marketplace including low prices, new technologies, improved service quality,

and choice among providers. However, these benefits will be lost, and competition for

mobile broadband services will be sharply curtailed, if the nation's leading wireless

carriers are allowed unfettered discretion to develop and market devices that have

limited capability outside of their exclusive 700 MHz sub-bands. It is imperative for the

Commission to exercise its power and grant the relief sought by the alliance. The game

is over and it is closing time and the night watch-man is jingling his keys.

Respectfully submitted,

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Managing Member

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